

## Department of the Navy, DoD

## §701.110

(e) *Final action, time limits and documentation.* (1) The written appeal notification granting or denying access is the final naval activity action on the initial request for access.

(2) All appeals shall be processed within 30 working days of receipt, unless the appellate authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(f) *Denial of appeal by activity's failure to act.* An individual may consider his/her appeal denied if the appellate authority fails to:

(1) Take final action on the appeal within 30 working days of receipt when no extension of time notice was given; or

(2) Take final action within the period established by the notice to the appellate authority of the need for an extension of time to complete action on the appeal.

### §701.110 Conditions of disclosure.

The PA identifies 12 conditions of disclosure whereby records contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. These instances are identified as:

(a) *Official need to know.* Records pertaining to an individual may be disclosed without the consent of the individual to any DOD official who has need for the record in the performance of his/her assigned duties. Rank, position, or title alone does not authorize access to PPI about others. An official need must exist before disclosure can be made. For the purposes of disclosure, DOD is considered a single agency.

NOTE: No disclosure accounting required.

(b) *FOIA.* Records must be disclosed if their release is required by FOIA. 5 U.S.C. 552 and SECNAVINST 5720.42F require that records be made available to the public unless exempted from disclosure by one of the nine FOIA exemptions found in the Act. It follows, therefore, that if a record is not ex-

empt from disclosure, it must be released. Note: No disclosure accounting required.

(c) *Routine use.* Each DON PA system of records notice identifies what records may be disclosed outside DOD without consent of the individual to whom the record pertains.

NOTE: Disclosure accounting is required.

(1) A routine use shall be compatible with and related to the purpose for which the record was compiled; identify the persons or organizations to whom the record may be released; identify specifically the uses to which the information may be put by the receiving agency; and, have been published previously in the FEDERAL REGISTER.

(2) A routine use shall be established for each user of the information outside the DOD who needs the information for an official purpose.

(3) A routine use may be established, discontinued, or amended without the consent of the individuals involved. However, new or changed routine uses must be published in the FEDERAL REGISTER for at least 30 days before actually disclosing the records.

(4) In addition to specific routine uses, the DOD has identified certain "Blanket Routine Uses" that apply to all systems, unless the systems notice states that they do not. (See §701.112 regarding Blanket Routine Uses.)

(d) *Bureau of Census.* Records may be disclosed to the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13.

NOTE: Disclosure accounting is required.

(e) *Statistical research and reporting.* Records may be disclosed for statistical research and reporting without the consent of the individual to whom they pertain. Before such disclosures, the recipient must provide advance written assurance that the records will be used as statistical research or reporting records; only to transferred in a form that is not individually identifiable; and will not be used, in whole or in part, to make any determination about rights, benefits, or entitlements of specific individuals.

NOTE: Disclosure accounting is required.

(f) *National Archives and Records Administration (NARA).* Records may be

disclosed to NARA as a record that has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the U.S. or his designee to determine whether the record has such value.

NOTE: Disclosure accounting is required.

(1) Records may be disclosed to NARA to carry out records management inspections required by law.

(2) Records transferred to a Federal Records Center (FRC) operated by NARA for storage are not within this category. Those records continue to be maintained and controlled by the transferring DON activity. The FRC is considered to be the agency of the DON for this purpose.

(g) *Disclosures for law enforcement purposes.* Records may be disclosed without the consent of the individual whom they pertain to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity provided the civil or criminal law enforcement activity is authorized by law; the head of the law enforcement activity or a designee has made a written request specifying the particular records desired and the law enforcement purpose (such as criminal investigations, enforcement of a civil law, or a similar purpose) for which the record is sought; and there is no Federal statute that prohibits the disclosure of the records to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

(1) Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a. To enable disclosure, a specific routine use must be published in the record system notice or another governing authority must exist.

(2) If a DON activity discloses a record outside the DOD for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be under an established routine use, such as the "Blanket Routine Use" for law enforcement.

(3) Blanket requests from law enforcement activities for all records per-

taining to an individual shall not be honored. The requesting agency must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(4) When a record is released to a law enforcement activity under this routine use, DON activities shall maintain a disclosure accounting. This disclosure accounting shall not be made available to the individual to whom the record pertains if the law enforcement activity requests that the disclosure not be released.

(5) The Blanket Routine Use for law enforcement records applies to all DON PA systems of records notices. Only by including this routine use can a DON activity on its own initiative report indications of violations of law found in a system of records to a law enforcement activity without the consent of the individual to whom the record pertains.

(h) *Emergency disclosures.* Records may be disclosed without the written consent of the individual to whom they pertain if disclosure is made under compelling circumstances affecting the health or safety of any individual. The affected individual need not be the subject of the record disclosed.

NOTE: Disclosure accounting is required.

(1) When such a disclosure is made, notify the individual who is the subject of the record. Notification sent to the last known address of the individual reflected in the records is sufficient.

(2) In instances where information is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number.

(3) The specific data to be disclosed is at the discretion of the releasing authority. Emergency medical information may be released by telephone.

(i) *Disclosure to Congress.* (1) Records may be disclosed without the consent of the individual to whom they pertain to either house of the Congress or to any committee, joint committee or subcommittee of Congress if the release pertains to a matter within the jurisdiction of the committee. Note: Disclosure accounting is required.

(2) See § 701.107(g) regarding how to process constituent inquiry requests.

## Department of the Navy, DoD

## § 701.111

(j) *Government Accountability Office (GAO)*. Records may be disclosed to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the GAO.

NOTE: Disclosure accounting is required.

(k) *Court orders*. Records may be disclosed without the consent of the person to whom they pertain under a court order signed by a judge of a court of competent jurisdiction. Releases may also be made under the compulsory legal process of Federal and state bodies having authority to issue such process.

NOTE: Disclosure accounting is required.

(1) The court order must bear the signature of a Federal, state, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order will be sufficient evidence of the court's exercise of its authority of the minimal requirements of SECNAVINST 5820.8A, "Release of Official Information for Litigation Purposes and Testimony by DON Personnel."

(2) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the individual to whom the record pertains. Notification sent to the last known address of the individual is sufficient. If the order has not yet become a matter of public record, seek to be advised as to when it will become public. Neither the identity nor the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the record subject unless the court order has become a matter of public record.

(l) *Disclosures to consumer reporting agencies*. Certain information may be disclosed to a consumer reporting agency in accordance with section 3711(f) of Title 31.

NOTE: Certain information (e.g., name, address, SSN, other information necessary to establish the identity of the individual; amount, status, and history of the claim; and the agency or program under which the claim arose, may be disclosed to consumer reporting agencies (*i.e.*, credit reference companies as defined by the Federal Claims Collection Act of 1966, 31 U.S.C. 952d).

NOTE: Disclosure accounting is required.

### § 701.111 Disclosure accounting.

Disclosure accounting allows the individual to determine what agencies or persons have been provided information from the record, enable DON activities to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trail of DON's compliance with 5 U.S.C. 552a. Since the characteristics of various records maintained within the DON vary widely, no uniform method for keeping disclosure accountings is prescribed. The primary criteria are that the selected method be one which will enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her; provide a basis for informing recipients of subsequent amendments or statements or dispute concerning the record; and, provide a means to prove, if necessary, that the activity has complied with the requirements of 5 U.S.C. 552a, this subpart and subpart G of this part.

(a) *Record of disclosures made*. DON activities must keep an accurate record of all disclosures made from a record (including those made with the consent of the individual) except those made to DOD personnel for use in performing their official duties and those disclosures made under FOIA. Accordingly, each DON activity with respect to each system of records under its control must keep a record of the date of the disclosure, a description of the information disclosed, the purpose of the disclosure, and the name and address of the person or agency to whom the disclosure was made. OPNAV Form 5211/9, Disclosure Accounting Form, is downloadable from <http://www.privacy.navy.mil> and should be used whenever possible to account for disclosures.

NOTE: DON activities do not have to maintain a disclosure accounting for disclosures made under (b)(1), to those officers and employees of an agency which maintains the record who have a need for the record in the performance of their duties or under (b)(2)—which is required under FOIA.

(b) *Retention*. Disclosure accountings must be kept for five years after the